

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

International Transmission Company

Docket Nos. ER01-3000-000
ER01-3000-001

RT01-101-000
RT01-101-001

DTE Energy Company

EC01-146-000
EC01-146-001

ORDER ACCEPTING AGREEMENTS FOR FILING AND APPROVING TRANSFER OF
CONTROL OVER JURISDICTIONAL FACILITIES, SUBJECT TO SUBSEQUENT FILINGS

(Issued December 20, 2001)

In this order, we will accept for filing, pursuant to section 205 of the Federal Power Act (FPA), subject to the submittal of subsequent filings as discussed herein, an agreement between the Midwest Independent Transmission System Operator, Inc (Midwest ISO) and International Transmission Company (International Transmission),¹ and find that International Transmission's proposal is consistent with Order No. 2000.² In addition, we will approve the transfer of operational control of International Transmission's facilities to Midwest ISO under FPA section 203. This order is in the public interest because International Transmission's participation in Midwest ISO contributes to the public interest

¹Appendix I Agreement by and Between International Transmission Company and the Midwest Independent Transmission System Operator, Inc. (ITC-MISO Agreement).

²Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999) (Order No. 2000), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000) (Order No. 2000-A), aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC, Nos. 00-1174, et al. (D.C. Cir., Dec. 11, 2001).

benefits that will result from an operational Midwest ISO as a regional transmission organization (RTO)³ and furthers the goals of Order No. 2000.

Introduction

Today, the Commission is acting on five interrelated orders intended to move the process forward in establishing an optimally-sized RTO in the Midwest and to support the establishment of viable, for-profit transmission companies that operate under an RTO umbrella and may, depending on their level of independence from market participants, perform certain of the RTO functions contained in the Commission's Order No. 2000. In taking today's actions, we have made findings as to the RTO structure that we conclude best serves the public interest in the Midwest. Our decisions in these five orders recognize the realities and needs of the Midwestern wholesale electricity market and take into account the views of the Midwestern State commissions. However, our actions should not be construed to prejudice other types of RTOs in other parts of the country, including a structure in which a for-profit transmission company could be an umbrella RTO.

For two years now, since the issuance of Order No. 2000, electric industry participants in the Midwest, State commissions, and this Commission have struggled with an array of different proposals and issues and how best to achieve a seamless wholesale power market in the Midwest. While both Midwest ISO and Alliance Companies have spent considerable money and resources in developing and attempting to reconcile their competing proposals, the Commission is at a point where we must make some difficult decisions with respect to the competing proposals. Based on the record before us, and taking into account the views of the majority of the Midwestern State commissions, we conclude that Midwest ISO's proposal most fully complies with the vision and requirements of Order No. 2000, in particular the requirement that an RTO be of sufficient scope, and that the Midwest ISO therefore should serve as the foundation upon which a Midwest RTO should be built. In this regard, we are confident that the Alliance Companies' desire to be a viable transmission business can be accommodated under the Midwest ISO umbrella.

In today's five orders, we take the following specific steps:

- (1) approve the Midwest ISO as an RTO (Docket No. RT01-87-000, et al.);
- (2) approve International Transmission Company's (International Transmission) request to transfer operational control of its transmission facilities to Midwest ISO; and accept an agreement between International Transmission and Midwest ISO that would allow International Transmission to be an

³Public interest benefits include the elimination of transmission rate pancaking and increased transmission system reliability.

independent transmission company that would share certain RTO functions with Midwest ISO (Docket No. ER01-3000-000, et al.);

(3) preliminarily approve the disposition of International Transmission's transmission facilities to an unaffiliated entity with no ownership interest in a market participant, thus facilitating a stand-alone transmission company under the Midwest ISO umbrella (Docket No. EC01-137-000);

(4) conclude that Alliance Companies, which filed for approval as a separate RTO, lacks sufficient scope to exist as a stand-alone RTO; but direct Alliance Companies to explore how their business plan (including the proposal for National Grid to become the managing member of Alliance) can be accommodated within the Midwest ISO (Docket No. RT01-88-000, et al.); and

(5) grant in part and defer in part National Grid's request for a declaratory order that it is not a market participant and dismiss Alliance Companies' business plan (Docket No. EL01-80-001, et al.).

We now turn to the specific actions taken in the above captioned dockets.

Background

International Transmission has proposed an independent transmission company (ITC) coupled with oversight by the Midwest ISO. Under the proposal, certain RTO functions will be performed by International Transmission under the supervision of or in coordination with the Midwest ISO, while other functions will be performed by the Midwest ISO. We welcome International Transmission's proposal as a creative and innovative approach to several important issues involved in the formation of such regional entities. While certain aspects of International Transmission's petition require further development, we believe that its proposal may allow greater flexibility in the formation of RTOs while still satisfying Order No. 2000's goal of increased regionalization of the grid.

Description of International Transmission

International Transmission, a Michigan corporation and wholly-owned subsidiary of DTE Energy Company (DTE Energy), is engaged in the transmission of electric energy in interstate commerce and provides transmission service in the State of Michigan, pursuant to its open access transmission tariff (OATT).⁴ International Transmission's facilities are directly interconnected with those of Michigan Electric Transmission Company (METC), a wholly-owned subsidiary of CMS Energy

⁴The Commission accepted International Transmission's OATT for filing in a letter order issued July 6, 2000 in Docket No. ER00-2622-000.

Corporation (CMS),⁵ and those of American Transmission Systems, Inc., a wholly-owned subsidiary of FirstEnergy Corporation. International Transmission and METC jointly operate their interconnected transmission systems, which comprise substantially all of the Michigan transmission grid, as a single control area.⁶ METC and International Transmission also jointly provide transmission service under their Joint OATT.⁷

International Transmission's Proposed Transfer and Corporate Structure

International Transmission announces that, concurrent with its August 31 filing, it is exercising its right to terminate its membership as a participating transmission owner in the proposed Alliance RTO,⁸ and proposes to become a member of Midwest ISO's proposed RTO pursuant to the terms of the ITC-MISO Agreement, in order to facilitate its compliance with Order No. 2000 requirements.⁹ The

⁵METC owns and operates the transmission facilities formerly owned by Consumers Energy Company (Consumers), another wholly-owned subsidiary of CMS. On November 13, 2001, in Docket Nos. EC02-23-000 and ER02-320-000, Consumers and METC, and Trans-Elect, Inc., and Michigan Transco Holdings, Limited Partnership (Michigan Transco Holdings LP) filed for authorization of a disposition of jurisdictional facilities in which (1) Consumers will merge METC with and into Michigan Transco LLC, and (2) Consumers will sell and transfer and Michigan Transco Holdings LP will purchase and accept all of Consumers membership interests in Michigan Transco LLC.

⁶International Transmission and METC are parties to the Michigan Electric Coordination System Transmission Interconnection and Control Area Operating Agreement (MECS Agreement). The MECS Agreement was accepted for filing by the Commission in a letter order issued on March 22, 2001 in Docket No. ER01-1221-000.

⁷See Consumers Energy Company and International Transmission Company, 92 FERC ¶ 61,192 (2000).

⁸August 31 Transmittal at 13-14 (citing Article IX of the Alliance Agreement Establishing the Alliance Independent System Operator, LLC (Alliance Agreement), and its Notice of Withdrawal letter dated August 31, 2001 to the participating transmission owners in the proposed Alliance RTO. (Attachment 2)).

⁹The Midwest ISO Agreement defines a "Member" as "[a] person or business entity which is (i) an Eligible Customer, as defined under the [Midwest ISO OATT], or (ii) an Owner, as defined herein, which pays to the Midwest ISO, the nonrefundable membership fees as required herein. Such person or entity shall be a Member during the period covered by the applicable membership fees unless earlier terminated pursuant to this Agreement." Midwest ISO Agreement, Art.I, § I.F.

ITC-MISO Agreement is modeled after Appendix I of the Midwest ISO Agreement,¹⁰ which established a framework for the membership and participation of ITCs to operate as stand-alone businesses within Midwest ISO.¹¹ International Transmission proposes to function as a wireco¹² that would own, maintain and develop transmission, while ceding operational control of the International Transmission system over such functions as congestion management and curtailments, tariff administration, and security coordination to Midwest ISO. According to International Transmission and Midwest ISO, the ITC-MISO Agreement would place Midwest ISO in essentially the same relationship to International Transmission's facilities regarding functional control as it stands to the transmission facilities of its transmission-owning members, as set forth in the Midwest ISO Agreement.

International Transmission seeks a Commission determination that its proposed Appendix I arrangement complies with Order No. 2000's requirements to participate in an RTO. International Transmission also requests that the Commission find that it has joined a Commission-approved RTO by December 15, 2001, and thus has met one of the Commission's conditions for charging "innovative rates."¹³ In addition, Applicants seek to transfer operational control of International Transmission's facilities to Midwest ISO under the ITC-MISO Agreement. International Transmission seeks waiver of the Commission's regulations to permit the ITC-MISO Agreement to become effective as of the "Control Date," i.e., the date that Midwest ISO begins operations.¹⁴

¹⁰The Commission has accepted the Midwest ISO Agreement for filing. See Midwest Independent Transmission System Operator, Inc., 84 FERC ¶ 61,231 at 62,181 (1998) (MISO Order), order on reconsideration, 85 FERC ¶ 61,250 (1998), order on compliance, 87 FERC ¶ 61,085 (1999).

¹¹Commonwealth Edison Co., 90 FERC ¶ 61,192 at 61,620 (2000) (ComEd).

¹²A wireco is a "for-profit transmission facilities management company that receives operating instructions from independent system operators." MISO Order, 84 FERC at 62,146, n. 58.

¹³, See International Transmission Co., 92 FERC ¶ 61,276 (2000) (September 28 Order), reh'g pending. The Commission conditionally authorized International Transmission to charge innovative transmission rates when it became a stand-alone transmission business with no corporate affiliation whatsoever, whether through active or passive ownership interests, with any "market participant," as that term is defined at 18 C.F.R. § 35.34(b)(2). International Transmission has since committed to not charge innovative rates until (1) Midwest ISO is determined to be an Order No. 2000-compliant RTO and (2) International Transmission has been divested to an unaffiliated third party. See September 10, 2001 filing in Docket Nos. ER00-3295-002 and EC01-137-000.

¹⁴August 31 Transmittal at 49.

International Transmission states that it is the only public utility transmission owner that has pledged to become truly independent of market participants (i.e., with no active or passive ownership ties). International Transmission references its joint filing with DTE Energy in Docket No. EC01-137-000 under FPA Section 203 to divest International Transmission to an as yet-unidentified third party.¹⁵

Supplemental Agreement

On November 15, 2001, in response to intervenors' concerns that the ITC-MISO Agreement should not become effective until International Transmission becomes independent, International Transmission filed a Supplemental Agreement¹⁶ in this proceeding to amend the ITC-MISO Agreement. International Transmission states that "the intent of the Supplemental Agreement is to ensure that International Transmission receives none of the benefits which would accrue under Appendix I unless and until such time as International Transmission is divested to an entity which is not affiliated with market participants." International Transmission adds that the Supplemental Agreement also addresses Midwest ISO TOs' concerns regarding its proposed Appendix I Arrangement.¹⁷ International Transmission requests that the Commission accept the ITC-MISO Agreement for filing, as supplemented by the Supplemental Agreement. International Transmission also requests that the Commission make certain other findings, as specified in its August 31 filing.

¹⁵The Commission will be issuing an order in Docket No. EC01-137-000 contemporaneously with its issuance of an order in this proceeding.

¹⁶The Supplemental Agreement was entered into by Midwest ISO, International Transmission and the Midwest ISO transmission owners (Midwest ISO TOs).

¹⁷Midwest ISO TOs express concern regarding International Transmission's contractual relationship with Midwest ISO; in particular, they state that International Transmission "had not executed nor committed to execute the [Midwest ISO] Agreement." See Midwest ISO TOs Intervention at 2 in Docket No. ER01-3000-000, et al.

In addition to amending specific provisions of the ITC-MISO Agreement,¹⁸ section 4 of the Supplemental Agreement proposes that Sections 4.2.2, 5, 7, 8.2, 9, 11.3 and 11.4 (Special Provisions)¹⁹ of the ITC-MISO Agreement not take effect until the Commission approves an effective date for the Special Provisions. International Transmission requests that the Commission approve the Special Provisions, but clarify that the Special Provisions will become effective only upon the divestiture of International Transmission to an entity not affiliated with market participants. International Transmission further requests waiver of the 60-day prior notice requirement to permit the Supplemental Agreement to become effective as of the Control Date.

Motions to Intervene, Notices of Intervention, and Protests

Notice of International Transmission's and DTE Energy's August 31, 2001 filings was published in the Federal Register, 66 Fed. Reg 48,249 (2001) with protests and interventions due on or before September 21, 2001. Motions to intervene, comments and protests were filed by the parties listed in the attached appendix. On October 9, 2001 and December 7, 2001, Applicants filed answers to the motions filed in this proceeding, which address issues raised by the intervenors.

Notice of International Transmission's November 15, 2001 filing was published in the Federal Register, 66 Fed. Reg 59,240 (2001) with protests and interventions due on or before November 30, 2001. Parties who filed motions to intervene or protests are included in the attached appendix. On

¹⁸The Supplemental Agreement addresses such issues as revenue distributions, dispute resolution, cost responsibility and governance rights of International Transmission as an Appendix I Member, and certain authorities of the Owners. See Supplemental Agreement, §§ 5, 7, 8, 9, 10 and 11. The Supplemental Agreement would become effective upon the date that it is approved by the Commission or the date that the ITC-MISO Agreement becomes effective, what ever date is later, and would remain in effect during the entire term of the ITC-MISO Agreement, and would terminate upon any expiration or termination of the ITC-MISO Agreement. Sections 6, 7, 10 and 11 would survive any expiration or termination of the Supplemental Agreement. Supplemental Agreement, §§ 2.1, 2.2, 2.3.

¹⁹The Special Provisions would assign certain rights to International Transmission: Section 4.2.2 (certain system security authority granted to International Transmission); Section 5 (billing service for the International Transmission OATT); Sections 7.1 and 7.2 (International Transmission's authority to establish transmission facility ratings and operating procedures, and to set maintenance and outage schedules); Section 8.2 (future development of a coordinated planning process between International Transmission and the Midwest ISO, subject to Commission approval); and Section 9 (International Transmission's authority to provide generator interconnection service, subject to Commission approval); Section 11.3 and its subsections (International Transmission's authority to establish the International Transmission OATT administered by the Midwest ISO) and Section 11.4 (International Transmission's authority to set zonal rates). See November 15, 2001 Transmittal at 4.

November 27, 2001, International Transmission subsequently filed additional executed signature pages of the remaining Midwest ISO TOs to the Supplemental Agreement. Notice of the November 27, 2001 filing was published in the Federal Register, 66 Fed. Reg 64,029 (2001) with comments due on or before December 18, 2001.

Discussion

I. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2001), the timely, unopposed motions to intervene and the notices of intervention by the State Commissions make the entities who filed them parties to this proceeding.²⁰ Given the early state of the proceedings, the interests of the entities, and the absence of undue delay or prejudice, we find good cause to grant the untimely, unopposed motions to intervene of the entities who filed them.

Rule 213 of our Rules of Practice and Procedure prohibits an answer to protests, unless otherwise ordered by the decisional authority. We will accept Applicants' answers to the extent that they aids us in our decisionmaking process.

II. Section 203 Request to Transfer Functional Control

Applicants request Commission authorization pursuant to FPA section 203 to transfer functional control of International Transmission's jurisdictional transmission facilities to Midwest ISO.²¹ They also request waiver of Part 33 of the Commission's regulations as inapplicable to this proposal. Applicants state that the Commission does not apply the same criteria as it applies in merger proceedings in deciding whether a proposed transaction is "consistent with the public interest" when the disposition of facilities involves a transfer to a regional transmission entity.²² They contend that where the

²⁰Parties to this proceeding are listed in the attached appendix.

²¹Applicants incorporate by reference the list of Detroit Edison's (International Transmission's predecessor-in-interest) jurisdictional facilities over which functional control was to be transferred to the proposed Alliance RTO (on file in Docket No. EC99-80) and the list of Detroit Edison's facilities in the proposed transfer to International Transmission (on file in Docket No. EC00-86). Applicants note that in *Alliance Cos.*, 89 FERC ¶ 61,298 (1999) (Alliance I), the Commission conditionally approved Detroit Edison's request to transfer ownership and/or operational control of its transmission facilities to the Alliance RTO.

²²August 31 Transmittal at 48 (citing *Alliance Companies, et al.*, 96 FERC ¶ 61,052 (2001) (Alliance V)).

Commission has addressed a transaction involving the transfer of jurisdictional facilities to an RTO or ISO, the Commission has focused on the Order No. 2000 requirements or the eleven ISO principles.²³

A. Standard of Review

Section 203(a) of the FPA provides that the Commission must approve a disposition of jurisdictional facilities if it finds that the disposition "will be consistent with the public interest."²⁴ The Commission's Merger Policy Statement and Order No. 642 provide that the Commission will generally take account of three factors in analyzing whether a proposed disposition is consistent with the public interest: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.²⁵ Contrary to Applicants' assertion, these criteria do apply in determining whether the disposition of jurisdictional facilities involving a transfer to a regional transmission entity is consistent with the public interest. We also disagree with Applicants' assertion that Part 33 of the Commission's regulations does not apply here, since this transaction requires Commission authorization under FPA section 203.²⁶ While the Commission is flexible when evaluating section 203 applications to determine whether a transaction taken as whole is consistent with the public interest,²⁷ it must be able to obtain the information necessary to determine that an application is consistent with the public interest.²⁸ Although Applicants have not included the support that is required to accompany a request for waiver of specific sections of the filing requirements,²⁹ the Commission finds that there is sufficient information elsewhere in the filing to evaluate the application.

²³International Transmission cites to New England Power Pool, 79 FERC ¶ 61,374 (1997) (NEPOOL) and Alliance V.

²⁴16 U.S.C. § 824b (1994).

²⁵ See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Stats. & Regs. ¶ 31,044 (1996), order on reconsideration, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997); see also Revised Filing Requirements Under Part 33 of the Commission's Regulations, Order No. 642, 65 Fed. Reg. 70,983 (2000), FERC Stats. & Regs. ¶ 31,111 (2000), order on reh'g, Order No. 642-A, 94 FERC ¶ 61,289 (2001).

²⁶Revised Filing Requirements Under Part 33 of the Commission's Regulations, 63 Fed.Reg. 20,340 (1998), FERC Stats. & Regs., Proposed Reg. Preamble 1988-1998 ¶ 32,528 at 33,364 (1998); Order No. 642 at 31,876.

²⁷Order No. 642 at 31,879.

²⁸Id.

²⁹See Order No. 642 at 31,877.

As discussed below, we analyze the proposed transaction based on the information submitted in this proceeding to comply with Order No. 2000 requirements,³⁰ and find that the proposed transfer of functional control of International Transmission's jurisdictional facilities to Midwest ISO is consistent with the public interest. We find no evidence that the proposed transaction would have an adverse effect on competition, rates or regulation.

We find that the proposed transaction will not adversely affect competition. Applicants did not file a competitive screen analysis under sections 33.3 and 33.4 of the Commission's regulations. However, the proposed transaction does not involve a change in ownership or control of generation facilities;³¹ rather, it contemplates a transfer of operational control over jurisdictional transmission facilities from International Transmission to Midwest ISO. Therefore, the proposed transaction will not change the concentration of generation assets in any relevant market. Moreover, under Order No. 642, the Commission does not require a competitive screen analysis for a "transaction only involv[ing] the disposition of transmission facilities" or "specific RTO filing that directly responds to Order No. 2000" because of its strong belief that participation in RTOs is pro-competitive and its experience that anticompetitive effects are unlikely to arise from such transactions.³² In addition to solely involving the disposition of jurisdictional transmission facilities, the instant transaction is directly tied to an RTO filing, since International Transmission proposes to join Midwest ISO and participate in the RTO structure. Further, no party has raised competitive concerns. Therefore, pursuant to Order No. 642, we find that the disposition is pro-competitive, and International Transmission does not need to file a competitive screen analysis.

With regard to the effect on rates, the application does not indicate that rates to Applicants' customers would increase as a result of the proposed transaction. No intervenor has specifically alleged that the transmission rates to which it is subject under a given tariff will increase as a result of the

³⁰The Commission has noted that the standards set forth in Order No. 2000 require extensive information from RTO applicants that will demonstrate whether the proposal is in the public interest. Order No. 642 at 31,902. E.g., Alliance V. The applications in the cases cited by Applicants provided sufficient information for the Commission to determine that the proposed transactions were consistent with public interest under FPA section 203.

³¹We note that in Docket No. EC01-137-000, DTE Energy and International Transmission have submitted a section 203 application for the divestiture of International Transmission and disposition of its transmission facilities to an as yet-identified buyer. We are issuing an order in Docket No. EC01-137-000 contemporaneously with our issuance of this order.

³²Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,902-03. In addition, the Commission recognized the role of RTOs in mitigating market power, eliminating rate pancaking and better managing grid congestion. Id. at 31,898 & n. 72. E.g., Minnesota Power, Inc., and Superior, Water, Light and Power Co., 96 FERC ¶ 61,153 at 61,661 (2001).

transfer of control of International Transmission's facilities to the Midwest ISO. However, SE Michigan Systems is concerned that the proposed transfer of control, if it results in the bifurcation of the current MECS control area into two separate control areas, could give rise to pancaking of losses for deliveries from sources connected to METC facilities to a sink connected to International Transmission's facilities. Also, the Competitive Coalition asserts that because the super-regional rate under IRCA applies solely to transactions that are sourced and sunk within the Midwest ISO-Alliance super-region, the proposed transfer of control would result in pancaked rates for generators in Ontario selling power to loads in Ohio.

Although the Commission recognizes that rates as well as compensation for losses may differ according to the RTO which encompasses a given utility's facilities, the Commission must balance competing considerations in approving the boundaries and scope of RTOs. While some transmission customers may incur a higher rate for service in their local area and their transactions may be assigned larger losses, the formation of RTOs would result in a significant reduction, if not elimination, of rate pancaking for these same customers for transactions covering greater distances or traversing multiple transmission providers' systems.³³ Their competitive options have also increased in comparison to the circumstances before RTO formation. In addition, we note that for transmission customers currently using the transmission systems of the Midwest ISO members and the Alliance Companies, the rates, terms and conditions of service may be further adjusted if the proposed Alliance RTO and the Midwest ISO are merged into a single RTO.³⁴

We also find no evidence that the proposed transaction would adversely affect federal or state regulation. Transferring operational control over International Transmission's jurisdictional facilities to Midwest ISO will not change the Commission's regulatory authority over International Transmission and its transmission facilities, nor will it create a regulatory gap. With regard to possible adverse effects on state regulation, no party has raised concerns on this issue. In particular, no state has indicated that it lacks jurisdiction to consider the transaction's effect on retail rates, nor has any state asked us to do so.

For these reasons, we find that the proposed transaction will not adversely affect competition, rates or regulation, and therefore, is consistent with the public interest under FPA section 203. Accordingly, we approve the proposed transaction.

³³Order No. 2000 at 31,024-25.

³⁴Even if rates will increase for some customers, the transaction can still be consistent with the public interest if there are countervailing benefits from the transaction. Order No. 592 at 30,114. The Commission determines whether a transaction taken as a whole is consistent with the public interest by balancing the three criteria. Order No. 642-A at 62,035 (citing Northeast Utilities Service Co., 993 F.2d 937 (1st Cir. 1993); see also Order No. 642 at 31,902.

Applicants incorporate by reference from filings in Docket Nos. EC99-80 and EC00-86, a list of International Transmission's jurisdictional facilities over which functional control is to be passed to the Midwest ISO. These facilities include physical transmission facilities and all tariffs, service agreements, contracts and books and records necessary for International Transmission to provide transmission service under the terms of its OATT and Joint OATT. Pursuant to 18 C.F.R. § 33.2, Applicants are directed to provide the Commission with an updated final list of all of the jurisdictional facilities, together with information about their customers, and the contracts, tariffs, and service agreements being transferred within 30 days of the date of this order, to permit customers and the Commission to ensure there is no harm to rates.

Intervenors

MPPA Protest

MPPA requests that the Commission withhold approval of the proposed disposition until International Transmission obtains MPPA's consent pursuant to the Belle River Agreement between the two regarding certain jointly-owned transmission lines.³⁵ MPPA contends that International Transmission breaches the Belle River Agreement by attempting to transfer operational control of the transmission lines in which MPPA has an ownership interest without first obtaining MPPA's consent.³⁶ MPPA further states that International Transmission must confer with MPPA before the Commission makes a determination on the proposed transfer.

International Transmission answers that MPPA's rights under the Belle River Agreement are unaffected by International Transmission joining Midwest ISO, and that it seeks only to transfer operational control, not ownership, over these transmission lines to Midwest ISO. International Transmission responds that it has not violated the Belle River Agreement's "no adverse distinction" provision because it treats all of its transmission facilities identically. It further states that Midwest ISO's complete operational control over the International System under the ITC-MISO Agreement is the same as would have been exercised by the proposed Alliance RTO had International Transmission remained a member of the Alliance RTO. International Transmission offers to schedule a meeting to

³⁵The Belle River Transmission Ownership and Operating Agreement between the Detroit Edison Company and the Michigan Public Power Agency (Belle River Agreement) was assigned to International Transmission as a result of the disposition of Detroit Edison's transmission facilities to International Transmission.

³⁶MPPA claims that Applicants' proposed transfer violates the Belle River Agreement's prohibition on assigning the Agreement without a party's written consent and its prohibition on adverse distinction and undue discrimination in the disposal of the jointly-owned lines. MPPA Protest at 5,6 (citing Belle River Agreement, § § 13.1, and 9.1). MPPA did not attach the relevant provisions of the Belle River Agreement, as stated in its protest.

brief MPPA representatives on the significant benefits afforded to wholesale customers operating within Midwest ISO, and to clarify that such RTO membership does not create any undue adverse distinction or discrimination against MPPA.

Our determination that the application is consistent with the public interest does not affect any other necessary approvals, such as obtaining approval by any state commission or necessary consent by any party to a contract.³⁷ We direct Applicants to meet with MPPA representatives regarding any relevant concerns under the Belle River Agreement.

III. Preliminary Matters Under Section 205

A. International Transmission's Withdrawal

The Commission has conditionally approved the formation of Midwest ISO, and conditionally accepted for filing the Midwest ISO Tariff and the Midwest ISO Agreement, for which the Commission has required further modifications.³⁸ The Commission has also addressed, in a series of orders,³⁹ the Alliance's proposal for a regional transmission organization that complies with Order No. 2000 (Alliance RTO). On January 24, 2001, the Commission found that Alliance Companies' proposal to create a for profit transmission company or transco basically met the four characteristics and most of the functions discussed in Order No. 2000 but directed further modifications.⁴⁰

According to International Transmission, the proposed Alliance RTO's institutional framework is not well-suited to accommodating more than one stand-alone transmission entity. International Transmission asserts that, given the pending requirement for Alliance Companies to appoint an independent board, it is appropriate for International Transmission to withdraw its membership from the

³⁷Otter Tail Power Company, 97 FERC ¶ 61,226 at 62,033 (2001).

³⁸In the MISO Order, and subsequent orders, the Commission directed the Midwest ISO Participants to make various changes to the Midwest ISO Tariff and the Midwest ISO Agreement. E.g., Midwest Independent Transmission System Operator, Inc. et al., 87 FERC ¶ 61,085 (1999); Midwest ISO, 89 FERC ¶ 63,008 (1999), opinion and order affirming in part initial decision, Opinion No. 453, 97 FERC ¶ 61,033 (2001).

³⁹See Alliance Companies, et al., 89 FERC ¶ 61,298 (1999) (Alliance I); 91 FERC ¶ 61,152 (2000) (Alliance II).

⁴⁰See Alliance Companies, et al., 94 FERC ¶ 61,070 (2001) (Alliance III), order denying rehearing and providing clarification, 95 FERC ¶ 61,182 (2001) (Alliance IV); see also Alliance V.

proposed Alliance RTO and transfer operational control of the International System to Midwest ISO because several issues are still unresolved.⁴¹

Intervenors

Intervenors are divided regarding International Transmission's withdrawal from the proposed Alliance RTO and intent to join Midwest ISO's proposed RTO. Trans-Elect supports International Transmission's request and argues that National Grid's plans to acquire and own transmission facilities in the Alliance region preclude National Grid from also serving as operator of the Alliance RTO. Midwest ISO supports International Transmission's withdrawal from Alliance and joining Midwest ISO as consistent with Order No. 2000. ABATE and Enron oppose International Transmission's applications and advocate merging the Midwest ISO and the proposed Alliance RTO into a single RTO. ABATE cites reliability concerns if two separate RTOs exist, and requests that the Commission hold International Transmission's application in abeyance so that Midwest ISO and Alliance can form a single RTO.

Several intervenors also assert that it would be premature for the Commission to act on International Transmission's request to join Midwest ISO. Their concerns include allowing International Transmission to receive Appendix I rights before International Transmission is divested to an independent entity unaffiliated with market participants; finding that International Transmission has met the condition for charging innovative rates when Midwest ISO has not yet qualified as an RTO; and the reliability of the transmission grid if the existing MECS control area is separated.⁴² Enron states that it is premature for the Commission to rule on International Transmission's request to join the Midwest ISO because the Commission has taken no action on its pleadings filed in the proposed Alliance RTO and Midwest ISO compliance filings of August 31, 2001⁴³ requesting the Commission to immediately order a single RTO in the Midwest, which Enron asserts could moot International Transmission's application. Enron asks, at minimum, that the Commission deny International Transmission's proposal to retain its own OATT.

⁴¹August 31 Transmittal at 14. International Transmission states that these issues include Commission approval of National Grid USA (National Grid) as the Managing Member of the proposed Alliance RTO, the development of regional and super-regional transmission rates in compliance with the May 8 Order and the mitigation and rationalization of loop flows over impacted systems within the proposed Alliance RTO, such as the International System; see also, note 8 and accompanying text.

⁴²E.g., CTMC and IEU-Ohio Protest at 10, 11; Dairyland Protest at 3-4; SE Michigan Systems Protest at 4.

⁴³Docket Nos. RT01-88-005, et al., and RT01-99-000; Docket No. RT01-87-001.

In its answer, International Transmission agrees that Midwest ISO and the proposed Alliance RTO should be merged, but urges the Commission to approve the ITC-MISO Agreement without first deciding the RTO merger issue. International Transmission states that the Commission should not tie approval of the ITC-MISO Agreement, which involves International Transmission's relatively small zone and border location on the Midwest ISO-Alliance Super Region, to the broader policy context of the proposed RTO merger. International Transmission states that the Commission should send a strong positive signal regarding the decision to divest International Transmission and join Midwest ISO, and that important regulatory matters are in the ITC-MISO Agreement.

Commission Response

We will deny the intervenors' requests to defer action on International Transmission's applications. We believe it is time to move forward on the formation of an RTO in the Midwest and, thus, action on the instant applications is appropriate. Our finding in the instant proceeding is consistent with our concurrent action in other orders, discussed further below, approving the Midwest ISO's filings to comply with Order No. 2000, dismissing without prejudice the application of National Grid to manage the Alliance RTO, and addressing issues raised on rehearing of Alliance V.

Further, we note that under Article IX of the Alliance Agreement, International Transmission may unilaterally withdraw from the proposed Alliance RTO since neither Alliance Publico nor Alliance ISO has yet been formed.⁴⁴

Finally, we recognize the concerns expressed about the effect of the proposal on reliability in the lower peninsula of Michigan. We believe that such concern can be addressed by METC (or its successor), and other interested companies currently in the Alliance group, joining Midwest ISO. In an order being issued concurrently in Docket No. RT01-88-000, et al., we direct the Alliance Companies to explore joining the Midwest ISO.

B. Supplemental Agreement

As discussed earlier, in addition to amending specific provisions, the Supplemental Agreement addresses the relationship between International Transmission and Midwest ISO prior to a Commission-approved divestiture of International Transmission to an entity unaffiliated with market participants (Independence Event). The Supplemental Agreement makes clear that the Special Provisions of the ITC-MISO Agreement should only become effective when International Transmission is divested to an entity not affiliated with a market participant.

⁴⁴The Alliance Agreement was entered into by DTE Energy on behalf of its public utility operating company subsidiaries, which includes International Transmission. See Transmittal, dated June 3, 1999 (Docket No. ER99-3144-000).

Intervenors and International Transmission's Answer

Certain Intervenors cite to an inadequate time or opportunity to review the impact of the Supplemental Agreement. Intervenors also suggest modifications to the Supplemental Agreement or to the Special Provisions of the ITC-MISO Agreement.

While the Competitive Coalition does not object to the ITC-MISO Agreement, it requests that the Commission defer making any determination on the merits of the Special Provisions, except Section 9 of the ITC-MISO Agreement (generator interconnection services), until the Commission issues a final order in Docket No. RM01-12-000 (Rulemaking on Market Design and Market Structure). The Competitive Coalition asserts that it would be premature for the Commission to address the Special Provisions until the Commission deals with the apportionment of the same market activities that are proposed in the Special Provisions (*i.e.*, security coordination, regional transmission facility planning and tariff administration and design) which it states are at issue in Docket No. RM01-12-000. The Competitive Coalition states that International Transmission would not be substantially prejudiced by such a deferral since it will be months before the Commission approves International Transmission's divestiture to an unaffiliated third party, and if the Commission approves the ITC-MISO Agreement, International Transmission may participate in the Midwest ISO under the same terms and conditions as the Midwest TOs.

In its answer, International Transmission states that it agrees with the Competitive Coalition's request to defer action on the Special Provisions, except for its Tariff Menu proposal, if the Commission will determine RTO "slicing and dicing" issues in the context of a generic proceeding. International Transmission urges the Commission to issue an order addressing the Special Provisions in the context of Midwest region RTO decisions to give potential purchasers of International Transmission regulatory certainty regarding the relationship between International Transmission and Midwest ISO. With respect to generator interconnections, International Transmission states its willingness to clarify section 9 of the ITC-MISO Agreement, as may be required by the Commission.

Dairyland requests revisions of certain provisions of the Supplemental Agreement, stating that the creation of large RTOs should not result in "better deals" for those who join later than others. Specifically, Dairyland protests Section 3.5 which would condition membership in the Midwest ISO upon parties entering into the Supplemental Agreement and agreeing to be bound by all the terms of the Supplemental Agreement. Dairyland has applied for membership in the Midwest ISO, but states that it has not yet met the prerequisites for membership. In addition, Dairyland objects to section 8.4's proposal to give International Transmission the right to attend and participate in all meetings of Midwest ISO Members and/or Owners although International Transmission has not joined Midwest ISO as an

Owner. Finally, Dairyland protests that under section 7 of the Supplemental Agreement International Transmission could avoid paying for its reasonable share of Midwest ISO's expenditures, from which International Transmission would benefit. Dairyland states that section 7.1's proposed exit fee for International Transmission would not include these expenditures, and further, International could avoid paying any amount, pending resolution of any dispute regarding the amount of the exit fee, and would not pay any interest on any amount it may ultimately owe. Dairyland requests similar exit fee provisions if International Transmission retains these exit fee provisions. Dairyland further objects to section 7.3's requirement that Midwest ISO structure its deferred costs recovery under Schedule 10 of the Midwest ISO OATT as inconsistent with 18 C.F.R. § 35.34(j)(l)(iii), since Midwest ISO has requested Commission approval as an RTO.

International Transmission answers that all of the Midwest ISO Owners and Midwest ISO have signed the Supplemental Agreement, and that the Michigan Public Service Commission (Michigan Commission) supports the proposed Appendix I arrangement,⁴⁵ noting that only Dairyland objects to the terms of the Supplemental Agreement. It further states that the Supplemental Agreement is reasonable and consistent with open architecture. International Transmission also states that by delaying implementation of the Special Provisions, it has met many of the concerns raised by intervenors, and many of the "slicing and dicing" issues raised by intervenors will be addressed by the Commission in Docket No. RM01-12-000. International Transmission clarifies that it does not have the same voting rights as an Owner and cites to section 8.2 of ITC-MISO Agreement to contrast its lack of veto authority with the veto authority of Owners regarding revenue distribution or pricing.

International Transmission also asserts that the exit fee provision is reasonable because it does not include costs incurred prior to it joining Midwest ISO, and is thus consistent with Order No. 888 policies on stranded costs and exit fees. International Transmission states that it would pay its fair share of the fixed and variable costs of running Midwest ISO (including payment for the debt incurred by Midwest ISO to invest in the necessary systems to run the grid) through payment of the Midwest ISO OATT Schedule 10 charges. International Transmission also states that it would not object if Dairyland is given a similar exit fee provision when it joins Midwest ISO if Dairyland is also similarly situated to International Transmission.

Commission Response

As we stated earlier, we believe it is time to move forward on the formation of an RTO in the Midwest and, thus, action on the instant applications, including the Supplemental Agreement, is appropriate. However, we will make final determinations on the designated Special Provisions after the

⁴⁵International Transmission cites to the Notice of Intervention of the Michigan Commission, filed on September 21, 2001 in this proceeding. See Michigan Commission Notice of Intervention at 2.

occurrence of the Independence Event. In an order to be issued concurrently, in Docket No. EC01-137-000, we preliminarily approve an application for the disposition of International Transmission's jurisdictional facilities to an as yet-undetermined third party purchaser with no ownership interest in a market participant. However, in that order, we state that we will make a final determination on the proposed disposition after a Winning Bidder is selected. At such time, we will be able to more fully address the Special Provisions.

With regard to Dairyland's objections to section 3.5, we believe that it is reasonable that Midwest ISO require potential Midwest ISO owners to sign the Supplemental Agreement committing the applicant to be bound by all terms of the agreement.⁴⁶ We note, however, that the terms of the agreement to which the Midwest ISO owners will be bound are such terms as may be subsequently modified by the Commission or a court of competent jurisdiction.⁴⁷

We are also not persuaded by Dairyland's arguments concerning sections 7 and 8.4. Dairyland has not adequately supported its claims nor demonstrated that such provisions are inconsistent with the Midwest ISO Agreement or Order No. 2000. The exit fee provision contained in the Supplemental Agreement is similar to a provision regarding Midwest ISO TOs' cost responsibility upon departure from the Midwest ISO.⁴⁸ With regard to Dairyland's request for a similar exit fee provision. Dairyland's rights and obligations can be determined when it becomes an Owner or Member of Midwest ISO; i.e., becomes similarly situated to other Owners and Members.

IV. Analysis of Proposed ITC-MISO Agreement

A. Standard of Review

Our review of the proposed agreements is based on our statutory authority under section 205 of the FPA. We will also examine the proposed agreements pursuant to Order No. 2000 and Appendix I of the Midwest ISO Agreement.

⁴⁶We note that all Midwest ISO TOs (who are not conditional owners) have executed the Supplemental Agreement. See November 15 and November 26, 2001 filings. As noted above, the Supplemental Agreement establishes the relationship among International Transmission, Midwest ISO, and the Midwest ISO TOs (e.g., revenue distribution, cost responsibility and International Transmission's participation rights).

⁴⁷Section 3.5 states that this provision applies to "entities seeking to join Midwest ISO as an Owner." Dairyland has filed a conditional application to become a transmission owner within the Midwest ISO. Thus, the Midwest ISO characterizes Dairyland as a conditional transmission owner.

⁴⁸See Article V, Section II. B of the MISO Agreement.

B. Appendix I and Order No. 2000

International Transmission analyzes the ITC-MISO Agreement under Appendix I of the Midwest ISO Agreement and Order No. 2000 requirements.

Appendix I provides a general framework for ITCs to operate within the ISO structure, and permits Midwest ISO to assign to ITCs certain rights, responsibilities, and functions. Prior to assuming the Appendix I functions described below, the Appendix I agreement currently on file with the Commission requires an ITC to demonstrate that its own governance and structure is independent from any market participant and that the ITC is of sufficient size and configuration to warrant assignment of these rights.

Appendix I preserves Midwest ISO's role as regional security coordinator and its functions under Appendix E, Section V of the Midwest ISO Agreement.⁴⁹ However, Appendix I contemplates that an ITC may take on certain operational responsibilities, such as: (1) establishing ratings and operating procedures for its facilities; (2) scheduling transmission maintenance and outages; and (3) coordinating maintenance of certain generators within the ITC (as required under Section VII of Appendix E of the Midwest ISO Agreement). Appendix I also contemplates that the ITC may develop, in coordination with Midwest ISO, a congestion management plan,⁵⁰ with a unilateral right for the ITC to file its plan with the Commission. The ITC may plan for additions to its transmission facilities, subject to review by Midwest ISO before any ITC-planned facility is placed into operation. While Appendix I preserves the Midwest ISO's monitoring functions and its authority to impose and collect penalties under the Midwest ISO Agreement, it allows an ITC to impose and collect penalties approved by the Commission with respect to the ITC's congestion management program.

Appendix I also provides that Midwest ISO will continue to act as the sole administrator of the Midwest ISO Tariff and continue to administer all contracts for facilities studies and related filings. However, an ITC will be allowed to assume responsibility for completing studies of its own transmission system, subject to coordination with Midwest ISO. Appendix I provides that an ITC will have the first opportunity to implement any curtailments of transactions within the ITC system that are required under the Midwest ISO's OATT; Midwest ISO would be responsible for implementing all other tariffs.

⁴⁹The ITC's operational responsibilities are subject to dispute resolution pursuant to the Midwest ISO's dispute resolution procedures.

⁵⁰Under section 5 of Appendix I, an ITC may seek Commission acceptance, without Midwest ISO's approval, of mechanisms for managing congestion and for determining responsibility for transmission losses within the ITC's system. An ITC's congestion management mechanism would not be effective until the Commission approves protocols detailing when the Midwest ISO and ITC congestion management mechanisms would operate.

Appendix I recognizes that an ITC may unilaterally, subject to Commission review, change its transmission rates and inputs to the rate calculation for Midwest ISO's through-and-out rate. Revenue distribution would be subject to Appendix C of the Midwest ISO Agreement. Appendix I would also allow an ITC to assume the Midwest ISO's billing, credit and accounting responsibilities for transactions wholly with the ITC's system or where the load is located within the ITC.

Applicant

International Transmission proposes for Midwest ISO to have significantly greater operational authority and control over the International System than contemplated in the Appendix I currently on file with the Commission and ComEd. International Transmission states that Midwest ISO's primary responsibility for key transmission functions under the ITC-MISO Agreement would include full operational authority and functional control over the International Transmission system, including curtailment, and administration of the Midwest ISO Tariff, congestion management plan, and generator maintenance/outage scheduling in International Transmission's service territory.⁵¹ International Transmission further explains that the ITC-MISO Agreement would allow International Transmission, once it is fully independent of any market participants, to propose new transmission products and services under an alternative tariff, schedule maintenance outages in coordination with Midwest ISO, and make future proposals to the Commission concerning transmission planning and generation interconnection.⁵²

Intervenors

Midwest ISO states that the Commission's acceptance of International Transmission's filings would be consistent with the policies underlying Order No. 2000; provide for just and reasonable rates consistent with the public interest; and would demonstrate Midwest ISO's structural flexibility and accommodation. It states that a wireco can find an appropriate home in a tiered RTO structure to pursue its business goals while ensuring the Commission's concerns of independence and market coordination functions are realized through its relationship with Midwest ISO. Midwest ISO notes the flexible arrangement that the proposed Appendix I functions would provide International Transmission, and further asserts that the proposed division of operational responsibility should not impair the Midwest ISO's ability to carry out its functions. Trans-Elect favors the Midwest ISO model and the Appendix I procedures that it states specifically allow for transcos to operate as independent stand-

⁵¹August 31 Transmittal at 8, note 10.

⁵²As noted earlier, the ITC-MISO Agreement is a contractual arrangement for a tiered RTO structure, whereby Midwest ISO would provide RTO Services for International Transmission on behalf of, and for the benefit of, transmission customers located and taking services within the International Transmission Zone under the Midwest ISO OATT (and the Super-Region Tariff) and under the International Transmission OATT.

alone businesses within the RTO. CMTC and IEU-Ohio assert that the flexibility presented by the proposed Appendix I arrangement is essentially meaningless due to the lack of progress on bigger picture Midwest problems (e.g., price stability and service reliability improvements).

Commission Response

In an order to be concurrently issued in Docket No. RT01-87-000, et al., we grant Midwest ISO RTO status, subject to the changes directed therein. Our determination in that order provides the context for our evaluation of the proposed pre-independence and post-independence arrangements in this proceeding.

In Order No. 2000, the Commission concluded that a single organization is not required to perform all of the RTO functions, and welcomed innovative structures that met the needs of market participants while satisfying the minimum RTO requirements.⁵³ An RTO with the broadest possible reach is in the best interest of market development and its constituents' best interests. In ComEd, the Commission concluded that the proposed Appendix I arrangement was generally consistent with Order No. 2000.⁵⁴ We believe that International Transmission's proposal enhances the relationship of an ITC as part of a Midwest ISO RTO beyond that originally contemplated in Appendix I and is consistent with Order No. 2000.

V. Appendix I Arrangement

A. Preliminary Requirements

According to ComEd, prior to assuming Appendix I functions, an ITC must demonstrate that its own governance and structure is independent from any market participant and that the ITC is of sufficient size and configuration to warrant assignment of these rights.⁵⁵ Following our analysis of Applicant's proposal regarding independence and scope and configuration, we will evaluate Applicant's proposal pursuant to Appendix I, as set forth in ComEd.

1. Independence

Applicants

⁵³Order No. 2000 at 31,037.

⁵⁴ComEd at 61,627.

⁵⁵ComEd. at 61,627; see also Appendix I, section 1.1.

International Transmission states that the ITC-MISO Agreement contemplates the operation of International Transmission as a truly independent, stand-alone entity within Midwest ISO. As previously discussed, Applicants plan to divest International Transmission to a third party with no corporate affiliation, active or passive, with any market participant, by September 28, 2002.⁵⁶ International Transmission claims that this commitment to divest International Transmission to an unaffiliated third party exceeds the Appendix I independence requirement accepted in ComEd and RTO West, as well as Order No. 2000's current independence requirement.⁵⁷ International Transmission adds that pursuant to section 3.2 of the ITC-MISO Agreement, it would be granted certain governance rights as a "Member," but not an "Owner" in Midwest ISO.⁵⁸

Intervenors and International Transmission's Answer

CMTC and IEU-Ohio, Alliance Companies (Alliance), and Dairyland Power Cooperative (Dairyland) state that International Transmission, as a wholly-owned subsidiary of DTE Energy, does not currently meet the independence requirement of section 1.1 of Appendix I.⁵⁹ These intervenors request that the Commission withhold approval of the proposed ITC-MISO Agreement. ATCLLC adds that International Transmission's proposed structure should not cause the Commission to implement a higher standard of independence prohibiting passive ownership structures, which ATCLLC asserts are allowed by Order No. 2000 and Commission precedent.⁶⁰

⁵⁶August 31 Transmittal at 23. (Citing 18 C.F.R. § 35.34 (b)(2)).

⁵⁷Id. at 33 (citing Com Ed, 90 FERC at 61,617-18 and RTO West, 95 FERC at 61,328 & 61,334).

⁵⁸International Transmission further explains that the ITC-MISO Agreement grants certain rights to International Transmission, specifically, that no action requiring unanimous approval of the Owners of Midwest ISO under Article Two, Sections IX.C.2, 3, 4, 5, 6, 7 or 8 of the MISO Agreement may be undertaken without International Transmission's prior written consent, except to the extent that such action would not affect International Transmission's rights and obligations under the ITC-MISO Agreement. August 31 Transmittal at 35.

⁵⁹CMTC and IEU-Ohio state that an entity seeking to become an ITC must have a "governance and structure [that] assures independence of the ITC from any market participant." Midwest ISO FERC Electric Tariff, First Revised Rate Schedule No. 1, Appendix I at Original Sheet No. 211. See CMTC and IEU-Ohio Protest at 11.

⁶⁰See ATC LLC Protest at 4 (citing Order No. 2000 at 31,066; RTO West, 95 FERC ¶ 61,114 (2001); Alliance IV).

In its answer, International Transmission states that the Supplemental Agreement will provide for its membership in the Midwest ISO under the ITC-MISO Agreement without the Special Provisions. Midwest ISO agrees that the Special Provisions in the ITC-MISO Agreement should not take effect until the Independence Event. However, International Transmission emphasizes that Commission approval of the ITC-MISO Agreement is necessary to assure regulatory certainty for the prospective purchasers and to appropriately value International Transmission. International Transmission concludes that Commission approval of the ITC-MISO Agreement will balance the needs of both investors and consumers.

Commission Response

We note that International Transmission is not yet divested. As stated previously, in Docket No. EC01-137-000, we will determine the extent of International Transmission's market participation by examining its ownership structure after divestiture.⁶¹ At such time, we will make any necessary final decisions on the assignment of responsibilities under the ITC-MISO Agreement. As stated previously, in the interim, we believe that the Supplemental Agreement is reasonable and would provide adequate safeguards to facilitate International Transmission's participation in Midwest ISO. The Special Provisions identified therein would not be in effect during this interim period.

2. Scope and Configuration

Applicant

International Transmission asserts that Midwest ISO can easily provide it with the RTO services contemplated in the ITC-MISO Agreement, although two of International Transmission's three existing interconnections would be with transmission-owning members of the proposed Alliance RTO. Despite the lack of a direct interconnection with the facilities of any Midwest ISO TO, International Transmission believes that the required system control functions to be provided by Midwest ISO under the ITC-MISO Agreement can be communicated via remote data links to and from the Midwest ISO's facility in Carmel, Indiana.⁶² International Transmission argues that pursuant to Commission precedent, the physical interconnection of transmission wires is not required in order for an RTO to provide functional control services to a member system which may be physically isolated.⁶³

⁶¹International Transmission's proposal does not change the Commission's independence standard, as suggested by ATCLLC. We will apply the independence standard set forth in Order No. 2000 when examining its ownership structure in Docket No. EC01-137-000.

⁶²E.g., security coordination, short term reliability.

⁶³International Transmission cites RTO West, 95 FERC at 61,343-44 for the proposition that
(continued...)

International Transmission relies on the Settlement Agreement and IRCA arguing that they provide a platform of adequate regional scope and configuration for the operation of International Transmission within the Midwest ISO.⁶⁴

International Transmission also notes that joining Midwest ISO may entail bifurcating the joint MECS control area if METC chooses to remain in the proposed Alliance RTO.⁶⁵ Under the MECS Agreement, International Transmission and METC's obligations are strictly limited to the joint provision of control area services for MECS, and do not involve decisions regarding the dispatch of generation or other market participant-type services. International Transmission acknowledges the difficulty of continuing joint operation of the control area while taking security coordination services from two different RTOs, but states its willingness to work with METC to preserve their joint control area; however, International Transmission prefers that the Midwest ISO function as Security Coordinator for MECS. International Transmission states that it intends to terminate the MECS Agreement if it cannot reach mutual agreement with METC regarding the operation of the control area.⁶⁶

Intervenors

⁶³(...continued)

while Nevada Power and Sierra Pacific were not directly interconnected with each other, both should be included in RTO West. August 31 Transmittal at 37.

⁶⁴On May 8, 2001, the Commission accepted a Settlement Agreement among the Midwest ISO, Alliance Companies, and other parties, which set forth the Inter-RTO Cooperation Agreement (IRCA) between the Alliance Companies and Midwest ISO. See Illinois Power Company, et al., 95 FERC ¶ 61,183 (2001) (May 8 Order); reh'g denied, 95 FERC ¶ 61,026 (2001). The IRCA is a contractual agreement between Alliance Companies and Midwest ISO to coordinate activities for transmission and transmission-related services, and outlines steps to assist the signatories to the agreement in complying with Order No. 2000 requirements.

⁶⁵METC and its parent, CMS Energy, are currently members of the proposed Alliance RTO.

⁶⁶International Transmission states that it will terminate the MECS Agreement upon 12 months prior written notice pursuant to MECS Agreement, Article 15.3. International Transmission notes that it owns the Michigan Electric Power Coordination Center, MECS' control center, and International Transmission could operate the International Transmission Zone as its own control area. International Transmission assumes METC can also establish its own control area since METC agreed to the 12 month notice provision in the MECS Agreement. Upon International Transmission giving 12 months notice to terminate the MECS Agreement before RTO start-up (which precedes the actual termination date of the MECS Agreement), International Transmission will agree that the proposed Alliance RTO may act as a security coordinator for MECS until the 12 month notice period expires.

CMTC and IEU-Ohio, and the Competitive Coalition express concern that seams will result from the potential bifurcation of the joint control area with METC if International Transmission joins Midwest ISO. CMTC and IEU-Ohio assert that International Transmission's proposed solutions to the potential bifurcation do not provide reasonable assurance that the grid's integrity and reliability is not compromised or satisfies Order No. 2000,⁶⁷ and would require workable solutions before the Commission could further consider International Transmission's proposal. The Competitive Coalition states that International Transmission relies heavily upon the doubtful implementation of the IRCA to overcome the problems created by its geographic isolation and questions the feasibility of integrating International Transmission into Midwest ISO. The Competitive Coalition advocates addressing International Transmission's request to join Midwest ISO in a formal mediation to determine whether a single RTO for the Midwest should be established.

In its answer, International Transmission responds that intervenors' contentions regarding the creation of these potential seams are misplaced. International Transmission states that the seams issues will be handled through the development of one RTO, or alternatively, both the proposed Alliance RTO and Midwest ISO could provide control area and security coordination functions should the MECS Agreement need to be terminated. International Transmission further states that if the Commission finds that the IRCA is not adequate to resolve seams, then the Commission can order the merger of the proposed Alliance RTO and Midwest ISO, or strengthen the IRCA through policy initiatives setting forth RTO requirements and other mechanisms.

Commission Response

We are issuing concurrently with this order, in Docket Nos. RT01-88-000 et al., a separate order explaining that it has become apparent that despite the work done to date toward allowing the two RTOs to coexist, a seamless Midwest market remains an unfulfilled promise. In that order, we direct the Alliance Companies to explain their efforts to explore how their business plan (including National Grid) can be accommodated within the Midwest ISO (e.g., via Appendix I).

Concurrently, we approve Midwest ISO's scope and address Midwest ISO's configuration problems in detail in the order in Docket Nos. RT01-87-000 et al. With regard to these configuration problems, we note in that order that successful integration of some or all the Alliance companies would enhance operational efficiency in the Midwest market. We expect that such integration would also enhance International Transmission's participation in the Midwest ISO RTO and would moot International Transmission's reliance on the Settlement Agreement and the IRCA. Thus, we believe that International Transmission's participation in the Midwest ISO RTO will be consistent with the scope and configuration requirements of Order No. 2000.

⁶⁷See CMTC and IEU-Ohio Protest at 10, n. 6

B. Proposed Appendix I Functions⁶⁸

1. Operational Authority/Regional Security Coordination/Short-term Reliability

Applicant

International Transmission represents that after the Control Date, Midwest ISO will assume functional control of the International Transmission system. Midwest ISO will function as the Security Coordinator for the International Transmission zone pursuant to Section 4.2 of the ITC-MISO Agreement and Appendix E of the Midwest ISO Agreement (Appendix E).⁶⁹ Under Appendix E of the Midwest ISO Agreement, International Transmission could continue to monitor its own control areas for system security.⁷⁰ Similarly, the ITC-MISO Agreement would provide International Transmission with limited operational authority to address and mitigate certain system security issues in coordination with, and subject to intervention by, Midwest ISO in its role as Security Coordinator. International Transmission also proposes to perform its duties as the joint control area operator of MECS, pursuant to the MECS Agreement (subject to change as noted above). International Transmission adds that it is reasonable under American Transmission Company, 93 FERC ¶ 61,267 (2000)⁷¹ to require Midwest ISO to: (1) honor the terms of any other sub-control area agreement, or similar agreements entered into by International Transmission prior to the effective date of the ITC-

⁶⁸With the exception of the Special Provisions, International Transmission proposes that the provisions of its ITC-MISO Agreement, as described herein, would take effect on or after the Control Date, unless otherwise noted (e.g., OASIS).

⁶⁹According to International Transmission, International Transmission and Midwest ISO's rights and responsibilities regarding the security monitoring and emergency response related to Midwest ISO's security coordination responsibilities are identical to the rights and responsibilities of the Midwest ISO TOs and Midwest ISO, respectively, in the Midwest ISO Agreement. See August 31 Transmittal at 18 (citing Section V.B (Security Monitoring) and V.C. (Emergency Response) of Appendix E to the Midwest ISO Agreement).

⁷⁰Midwest ISO Agreement, Appendix E, § V.B.2. See also ITC-MISO Agreement, § 3.5 (Appendix E shall apply to the relationship between International Transmission and Midwest ISO as if International Transmission were an Owner).

⁷¹See also, American Transmission Company, reh'g denied, 95 FERC ¶ 61,287 (2001), reh'g rejected, 96 FERC ¶ 61,193 (2001).

MISO Agreement;⁷² and (2) work with any such sub-control area within the International Transmission System and arrange for on-going coordination of its Security Coordinator functions, as necessary.⁷³

As previously described, Midwest ISO would have greater operational control over the International System than contemplated in Appendix I⁷⁴ because it would have primary responsibility for key transmission functions under the ITC-MISO Agreement.⁷⁵ International Transmission states that pursuant to the ITC-MISO Agreement, Midwest ISO would retain control over the performance of load-flow and stability studies, the exchange of security information with local and regional entities, the monitoring of real-time operating characteristics, and should direct all actions necessary to maintain reliability. Based on the operational responsibilities described above, International Transmission states that the ITC-MISO Agreement fulfills the operational authority characteristic of Order No. 2000.

In addition, under section 4.1.3 of the ITC-MISO Agreement, Midwest ISO would undertake responsibility for the reliability of the International Transmission System consistent with Article Three, Section I.B and Appendices B and E of the Midwest ISO Agreement. According to International Transmission, Midwest ISO would fulfill the short-term reliability requirements of Order No. 2000 because it would: direct the implementation of all interchange schedules, monitor to ensure competitive fairness, redispatch generation, and have ultimate authority to disapprove scheduled outages of transmission facilities.⁷⁶

Section 7 of the ITC-MISO Agreement further provides that International Transmission would establish ratings of its facilities and set its own transmission maintenance and outage schedules, subject

⁷²On November 21, 2001, International Transmission submitted an application in Docket No. EC02-28-000, seeking Commission authorization to transfer to the Midwest ISO its joint open access transmission tariff (JOATT) with METC and the active service agreements that International Transmission has executed with JOATT customers. International Transmission contends that the filing is intended to ensure seamless administration of the JOATT after start-up of RTOs in the Midwest.

⁷³August 31 Transmittal at 18. (citing ITC-MISO Agreement, § 4.2).

⁷⁴See ComEd, 90 FERC at 61,619-20 (addressing proposed ITC responsibilities under Appendix I).

⁷⁵See discussion, section IV, B.

⁷⁶International Transmission states that it satisfies the short-term reliability RTO characteristic pursuant to Order No. 2000, and exceeds the ComEd standard for permissible delegation to an Appendix I-compliant transco. August 31 Transmittal at 39 (citing to Com Ed, 90 FERC ¶ 61,620 for the proposition that the Appendix I-compliant transco may maintain short-term reliability over its own facilities).

to dispute resolution if Midwest ISO disagrees. International Transmission adds that the proposed arrangement does not disturb these on-going interregional coordination efforts of Midwest ISO to develop a Super-Region Tariff with Alliance and to address seams issues with the PJM Interconnection.⁷⁷

Intervenors

As noted in our previous discussion on preliminary issues and scope, many intervenors are concerned with the impact of International Transmission joining the Midwest ISO. Their concerns involve reliability and operational issues related to International Transmission joining the Midwest ISO; i.e., the potential balkanization of the energy markets in Michigan; seams resulting from the potential bifurcation of the joint control area with METC; the difficulty of International Transmission's continued joint operation of the control area while taking security coordination services from two different RTOs.⁷⁸ CMTC and IEU-Ohio argue that neither of International Transmission's options of either splitting a control area between RTOs or joining one RTO but delegating security coordination to another, reasonably ensures the physical integrity and reliability of the grid. They state that International Transmission must provide a solution to the problems presented by the separation of an existing control area.

Midwest ISO asserts that in the circumstances that International Transmission presents in this proceeding, there is no proposed division of operational responsibilities that should impair the Midwest ISO's ability to carry out its functions. Midwest ISO further states that International Transmission's proposal to present future protocols to the Commission regarding system planning, generator interconnection, loss responsibility, would only give it the right to present matters to the Commission for consideration, but should not balkanize grid functions.

Commission Response

Section 4.2.3 of the ITC-MISO Agreement provides, "Notwithstanding any other provision of this Agreement, [Midwest ISO] may intercede and direct appropriate actions in its role as the regional security coordinator (the 'Security Coordinator'). If such [Midwest ISO] action is disputed by International, [Midwest ISO]'s position shall control pending resolution of the dispute." We believe, therefore, that the ITC-MISO Agreement assigns appropriate responsibilities to Midwest ISO for

⁷⁷International Transmission states that ComEd did not address the issue of interregional coordination because the Commission did not propose this function until after applicants' proposal in ComEd was tendered for filing.

⁷⁸E.g., ABATE, CMTC and IEU-Ohio, the Competitive Coalition.

operation of facilities under its control, including those of International Transmission, and its responsibilities as Security Coordinator for its region.

We defer final determination regarding International Transmission's proposed authority to: (1) take actions to ensure the security of the International Transmission System,⁷⁹ and (2) establish ratings of its facilities and set its own transmission maintenance and outage schedules, pursuant to sections 7.1 and 7.2, respectively, of the ITC-MISO Agreement. Pursuant to the Supplemental Agreement, these provisions would not be effective until the Independence Event. With regard to Midwest ISO honoring subcontrol area or similar agreements entered into by International Transmission prior to the effective date of the ITC-MISO Agreement, we will direct International Transmission to make a section 205 filing to propose necessary revisions to the JOATT (and any other agreements). International Transmission should also address the impact of the assignment of these agreements on Midwest ISO's authorities. With these exceptions, we find the operational authority, security coordination, and short-term reliability functions allocated to Midwest ISO in the ITC-MISO Agreement to be consistent with Order No. 2000 requirements.⁸⁰

2. Tariff Administration and Design

International Transmission states that its tariff proposal provides Midwest ISO, as the RTO, with significantly greater tariff administration authority than that proposed in ComEd.⁸¹ Under section 11.3.3 of the ITC-MISO Agreement, Midwest ISO would be the sole provider of transmission service, and the sole administrator of the Tariff Menu, i.e., the Midwest OATT and the International Transmission OATT. The ITC-MISO agreement does not provide for International Transmission to administer rate schedules under the Midwest ISO OATT. International Transmission further explains that it would lack authority to schedule transmission transactions within and into the International Transmission Zone, or to change the tariff design of the Midwest ISO OATT and the design of the tariff

⁷⁹Section 4.2.2 would grant International Transmission some system security authority; i.e., it could take actions to preserve the security for the International Transmission System before requesting assistance and coordinating with MISO.

⁸⁰Order No. 2000 at 31,037; 31,091 and 31,103.

⁸¹According to International Transmission, in ComEd, applicants proposed to assign tariff administration to the transco, which would: (1) administer rate schedules with the Midwest ISO OATT; (2) schedule transmission service within and into the transco service area; (3) develop protocols for coordinating and sharing scheduling information; and (4) approve requests for new interconnections. August 31 Transmittal at 41.

for the Super Region. International Transmission proposes that, consistent with RTO West,⁸² Midwest ISO would exclusively administer a Tariff menu that would give customers with transactions "sourcing" and "sinking" within the International Transmission Zone the sole discretion to take transmission service under the Midwest ISO OATT or the International Transmission OATT.⁸³ International Transmission states that customers requiring Drive-Out, Drive-In, and Drive-Through services will take such services under the Midwest ISO OATT (or Super-Region Tariff).⁸⁴ International Transmission states that the ITC-MISO Agreement provides a framework for "one-stop shopping" for transmission services through the Tariff Menu. In addition, under section 4.1.7 of the ITC-MISO Agreement, while Midwest ISO could perform system impact studies for the International Transmission Zone, International Transmission may propose study protocols to the Commission which, if accepted, would govern for the International Transmission Zone.⁸⁵

International Transmission states that the Tariff Menu would allow for significantly greater flexibility for International Transmission to respond to customer demands, which it states is critical to its success. International Transmission further states that both transmission service options would be available on a nondiscriminatory basis. According to International Transmission, the ITC-MISO Agreement would also allow International Transmission to enter into service agreements with customers

⁸²International Transmission seeks to alleviate the Commission's concerns regarding the "dovetailing of transmission tariffs" expressed in its order conditionally approving RTO West. RTO West, 95 FERC at 61,338 ("[I]t is appropriate to allow TransConnect, as an organization that is independent of market participants, the flexibility to propose mechanisms that will provide incentives for the TransConnect members to take actions within their control to improve grid operation"). International Transmission states that RTO West established a general policy that applies to the Tariff Menu because of the RTO's exclusive authority to make changes to the RTO Tariff, not precluding customers from taking transmission service under the Midwest ISO OATT, and to be operated as an independent, stand-alone transmission business which exceeds the independence standard proposed in RTO West and required in Order No. 2000. August 31 Transmittal at 23.

⁸³International Transmission states that transmission pricing set forth under the International Transmission OATT must conform with any methodology approved for the Midwest ISO and the Alliance-MISO Super-Region. Id. at 19.

⁸⁴International Transmission states that it is not proposing to offer, and cannot require, a "pancake" service option, where customers would take Midwest ISO or Super-Regional transmission service to or from the border of the International Transmission Zone with the payment of a pancake for service into or from within the International Transmission Zone. Id. at 20.

⁸⁵This would be contingent upon International Transmission having the authority to propose system impact study protocols to the Commission which, if accepted by the Commission, would govern for the International Transmission Zone. ITC-MISO agreement, § 4.1.7.

under the International Transmission OATT, and to establish tariff rates and the terms and conditions of service under the International Transmission OATT, consistent with RTO West.⁸⁶

Intervenors

Enron expresses concern regarding the loss of RTO authority that it states could result from the development of independent stand-alone transmission entities. Enron argues that approving International Transmission's proposed tariff menu conflicts with Order No. 2000's mandate that the RTO administer its own tariff and have the independent authority to file tariff changes.⁸⁷ Enron adds that International Transmission does not need a separate transmission tariff to provide a flexible response to unique customers in its zone;⁸⁸ if a single market is balkanized with multiple tariffs, conflicts regarding terms and conditions among the competing transmission tariffs could lead to continued discrimination in the market. Midwest ISO states that the option of taking service under the International Transmission OATT would allow International Transmission to provide a pricing zone under the Midwest ISO OATT to ensure that customers face no undue discrimination or prejudice.

International Transmission answers that the ITC-MISO Agreement is more consistent with the Commission's current policies regarding Order No. 2000 compliance than Appendix I and ComEd, and is also consistent with RTO West. International Transmission states that transmission service under the Tariff Menu would be administered by the Midwest ISO, it will be equally available on a non-discriminatory basis, and that no eligible customer will be denied access to transmission service under the Midwest ISO OATT or the Super Region transmission tariff.⁸⁹

Commission Response

⁸⁶See August 31 Transmittal at 23.

⁸⁷Enron cites to Order No. 2000 at pages 330-331.

⁸⁸Enron cites to the structure proposed by the potential ITCs participating in the Southeast RTO mediation, which provides for only one transmission tariff, which the RTO maintains and files. Regional Transmission Organizations, Docket No. RT01-100-000, Mediation Report for the Southeast RTO, 96 FERC ¶ 63,036 (2001).

⁸⁹International Transmission contends that the ITC-MISO Agreement creates an independent transmission company-RTO operating relationship that is consistent with the Commission's policies in Avista Corporation, et al., 95 FERC ¶ 61,114, order on reh'g, 96 FERC ¶ 61,058 (2001) (RTO West). International Transmission states that the availability of transmission service under the International Transmission OATT is merely an option that provides International Transmission with the needed flexibility to develop new, innovative products and services for maximizing throughput, service reliability and responsiveness to customers.

We will defer action on International Transmission's Tariff Menu proposal until International Transmission, or its successor, files a separate tariff. While International Transmission has explained the rationale for the Tariff Menu concept,⁹⁰ absent a proposed tariff and additional supporting information, we cannot determine whether the Tariff Menu concept can be accommodated. However, we are not foreclosing the Tariff Menu concept proposed by International Transmission. We are encouraged by the commitments made by International Transmission with regard to the Tariff Menu concept, specifically: (1) a separate tariff will be effective only after International Transmission becomes independent; (2) Midwest ISO will be the sole administrator of both tariffs; (3) any customer seeking service can choose to take service under either tariff with no rate pancaking; and (4) the Tariff Menu will still allow for "one-stop shopping" under Midwest ISO's OASIS.

We further note that Section 4.1.7 provides that Midwest ISO will have the authority to perform system impact studies for the International Transmission Zone subject to study protocols that can be developed by International Transmission subject to Commission approval.⁹¹ We will evaluate that aspect of the ITC-MISO Agreement after the occurrence of the Independence Event. International Transmission should provide details of any proposed system impact study protocols in a filing establishing its independence.

i. Base Transmission Rates

Section 11.4 of the ITC-MISO Agreement, would allow International Transmission to make unilateral filings to set the transmission rate for the International Transmission Zone.⁹² International Transmission must confer with Midwest ISO regarding any filings to change International Transmission's zonal rates, but Midwest ISO may not bar any such filing under this arrangement.

We will defer action on this provision, subject to further review after the occurrence of the Independence Event. We acknowledge International Transmission's concern that this ability to set rates

⁹⁰ According to International Transmission, the Tariff Menu will provide International Transmission with significantly greater flexibility to develop new, innovative transmission products and services in response to customer demand. August 31 Transmittal at 10.

⁹¹ Under Section 7.2 of Appendix I, if such a study is required to evaluate the ability of the ITC to provide the transmission service and the transaction is within it, the ITC can assume the responsibility, subject to coordination with Midwest ISO. If a facility study is required to study a constraint within the ITC, it would have the right to assume responsibility for the study, subject to coordination with Midwest ISO.

⁹² Pursuant to the Supplemental Agreement, this provision would become effective after the Independence Event.

is critical to International Transmission's business strategy, which focuses on the ownership, maintenance, and development, but not operational control of, transmission facilities.

ii. Transmission Pricing and Revenue Distribution

Section 11.1 of the ITC-MISO Agreement would bind International Transmission and Midwest ISO to the terms of the Midwest ISO pricing and revenue distribution protocols provided in the Midwest ISO Agreement, the Midwest ISO OATT and the final settlement rates established for the Super-Region in the Settlement Agreement.

We believe that International Transmission's proposal is consistent with Order No. 2000 requirements.⁹³ Thus, we will accept the transmission pricing and revenue distribution provisions of the ITC-MISO Agreement.⁹⁴

iii. Rate Pancaking

Intervenors and International Transmission's Response

Intervenors express rate pancaking concerns in the context of the potential bifurcation of the MECS joint control area. Wolverine states that the Commission should not permit the pancaking within Michigan that would result from a bifurcation of the joint control area without requiring an alternate mechanism recognizing all Michigan transmission facilities. Wolverine requests that Michigan transmission owners be required to meet, under the authority of an administrative law judge, to determine a common approach for the state that establishes a common Michigan RTO zone. SE Michigan Systems express concern that the two control areas' separate participation in different regional organizations may have unjust and unreasonable loss methodology consequences. SE Michigan Systems state that if bifurcation occurs, International Transmission should be required to hold customers harmless. SE Michigan Systems explain that customers should be entitled to the lowest of the total loss assessments. Midwest ISO states that International Transmission's customers would continue to benefit from non-pancaked transmission rates because its system is part of the Super Region.

In its answer, International Transmission acknowledges intervenors' concern regarding rate pancaking and clarifies that it has not requested to terminate the JOATT.⁹⁵ International Transmission states that there is no historic pancaking in Michigan because customers pay a single rate for the zone

⁹³Order No. 2000 at 31,171.

⁹⁴ITC-MISO Agreement, § 11; Supplemental Agreement, §§ 5 and 8.

⁹⁵Answer at 32-36.

where the transaction sinks;⁹⁶ however, if the Alliance OATT supersedes the JOATT, the additional ZTA charge for wholesale customers with a source in International Transmission's zone and a sink in METC's zone (or vice versa) on top of the zonal transmission rate, represents a rate pancake where none currently exists under the JOATT. To avoid this substantial increase in transmission charges, International Transmission supports retaining the JOATT and incorporating the benefits conferred by the JOATT in the RTO Tariff; alternatively, that the JOATT will remain in effect after any RTO regime commences as a Tariff Menu option, or that such benefits will be incorporated in the appropriate regional transmission tariff.

Commission Response

We share intervenors' concerns regarding the potential bifurcation of the MECS joint control area. Pursuant to our action concurrently in Docket No. RT01-88-000, et al., we believe that METC or its successor joining the Midwest ISO would effectively address intervenors' concerns by eliminating bifurcation of the MECS. We note that International Transmission has requested section 203 approval to transfer the JOATT and related service agreements to Midwest ISO.⁹⁷ However, International Transmission has not made a section 205 filing to amend the JOATT to reflect Midwest ISO's proposed administration of the JOATT. We will direct International Transmission to file, pursuant to section 205, any proposed revisions to the JOATT to allow Midwest ISO to administer this tariff.⁹⁸ Further, we will direct International Transmission to explore with the Midwest ISO and affected parties in Michigan, an effective method to retain, and perhaps extend, the benefits of the JOATT and file any further needed revisions to the JOATT as soon as possible to ensure that the benefits are retained.

3. Compensation for RTO Services

In section 13 of the ITC-MISO Agreement, International Transmission states that Midwest ISO should be reimbursed for providing RTO Services through Schedule 10 of the Midwest ISO OATT, regardless of which tariff is used. International Transmission would amend the International Transmission OATT and the JOATT to add a new schedule, based on Midwest ISO's current

⁹⁶International Transmission acknowledges that under the JOATT (Schedule O), rate pancaking for Schedules 1 and 2 and losses exists.

⁹⁷See supra note 80. Consumers Energy Company (Consumers) and METC do not oppose the transfers provided that the decision to transfer is not a final determination that Midwest ISO will have sole administrative authority with respect to the JOATT and related service agreements or that the JOATT will continue to be separate and apart from the Midwest ISO and Alliance tariffs. Motion for Leave to Intervene of Consumers and METC at 2.

⁹⁸We will address matters presented in International Transmission's filing in Docket No. EC02-28-000 in a separate order.

Schedule 10, whereby customers would be charged in order to ensure that Midwest ISO is paid for its costs.

Intervenors

Midwest ISO states that since Schedule 10 of its OATT would apply to all transactions in International Transmission's zone (regardless of whether the service is provided under the Midwest ISO OATT or the International Transmission OATT), no discrimination is present. Midwest ISO states that subject to Schedule 10, cost savings in the Midwest ISO's operations are available to all of the Midwest ISO's customers due to the not-for profit nature of the Midwest ISO and the structure of its Schedule 10.

Commission Response

We will accept International Transmission's proposal to reimburse Midwest ISO for its RTO Services through Schedule 10 of the Midwest ISO OATT; however, as we have not made a determination regarding the International Transmission OATT, International Transmission should include such a provision relating to reimbursement in a section 205 filing of the post-independence International Transmission OATT.

4. Congestion Management and Loss Responsibility

According to International Transmission, the ITC-MISO Agreement neither contemplates nor authorizes International Transmission to administer a congestion management plan; rather, Midwest ISO would perform congestion management in the International Transmission Zone. Sections 4.1.6 and 11.3.5 of the ITC-MISO Agreement provide that Midwest ISO shall perform congestion management functions for transactions arising under the International Transmission OATT, consistent with Attachment K of the Midwest ISO OATT and/or any other Commission approved congestion management plan that may be administered by Midwest ISO. International Transmission notes that under the IRCA Seams Agreement, Midwest ISO and Alliance RTO have committed to work together toward a consistent congestion management plan for the Alliance-MISO Super-Region. In addition, section 11.3.6 of the ITC-MISO Agreement would allow International Transmission to unilaterally file at the Commission, without Midwest ISO approval, a mechanism for determining loss responsibility within the International Transmission Zone.

Commission Response

We will accept International Transmission's proposal, pursuant to Section 4.1.6, that Midwest ISO perform congestion management functions for the International Transmission system, pursuant to Attachment K of the Midwest ISO OATT or any other Commission approved congestion management plan that may be administered by Midwest ISO. This proposal is consistent with Midwest ISO's overall plan to provide congestion management function for its region pursuant to Order No. 2000 requirements.⁹⁹

We will defer action on International Transmission's proposal, pursuant to Section 11.3.6 of the ITC-MISO Agreement, for the unilateral right to file a mechanism for determining loss responsibility within its zone. More detail is needed with respect to this provision, including an explanation of how the proposal is consistent with Order No. 2000 and other Commission actions.

5. Parallel Path Flow

International Transmission states that the ITC-MISO Agreement addresses the significant and adverse impact that parallel path flows have on the International Transmission System. Section 11.5 of the ITC-MISO Agreement would grant International Transmission the right to propose or otherwise support flow-based pricing methodologies and revenue distribution mechanisms that conform to the Midwest ISO Agreement, the Midwest ISO OATT and the settlement rates established for the Alliance-Midwest ISO Super-Region. Under section 11 of the ITC-MISO Agreement, Midwest ISO agrees to file by December 15, 2001, a proposal for addressing unscheduled flows over the Ontario-Michigan Interface (which International Transmission agrees to support), and transmission scheduling and pricing policies that would internalize most, if not all, parallel path flows within Midwest ISO. International Transmission concludes that it has established a relationship with Midwest ISO to resolve the loop flow issue, and they have committed to firm deadlines for submitting proposals to the Commission. International Transmission states that these commitments meet Order No. 2000's requirements with respect to parallel path flows. In addition, section 10.2 of the ITC-MISO Agreement would allow International Transmission to impose and collect penalties pursuant to a Commission approved parallel path mitigation program.¹⁰⁰

Intervenors

CMTC and IEU-Ohio state that the Commission directed future petitioners to provide a detailed description of both the coordination protocols and the system that will be used to correct unacceptable parallel flows. CMTC and IEU-Ohio contend that International Transmission's proposal

⁹⁹Order No. 2000 at 31,126.

¹⁰⁰Any such penalty should not cause an entity to be subjected to a penalty by both Midwest ISO and International Transmission for the same violation. ITC-MISO Agreement, § 10.2.

is deficient because it has not supplied the Appendix I information, required by the Commission in ComEd.

Commission Response

The Commission has stated that a proposal filed pursuant to Appendix I should include detailed descriptions of coordination protocols and the system that will be used to correct loop flows.¹⁰¹ While we believe that the parallel path mitigation program described in Applicant's proposal will provide some of the detail envisioned by the Commission, the proposal for addressing unscheduled loop flows that Midwest ISO has agreed to file on December 15, 2001 should provide the necessary detail that will allow the Commission to determine whether International Transmission and Midwest ISO can address unscheduled parallel flows. Therefore, we will defer judgment on the parallel path flow function until that time.

6. Ancillary Services

Section 11.3.4 of the ITC-MISO Agreement provides that Midwest ISO will be the provider of last resort of all such ancillary services under the International Transmission OATT that the Commission requires to be offered, and which are required by International Transmission to meet any control area obligations. International Transmission states that Midwest ISO would also provide ancillary services for any transmission service under the Midwest ISO OATT and the International Transmission OATT. International Transmission further states that the ITC-MISO Agreement's treatment of the obligation to provide ancillary services, as set forth in Appendix E, Section VI of the Midwest ISO Agreement, exceeds the ComEd standard for permissible delegation to an Appendix I-compliant transco.¹⁰²

Commission Response

We believe that the Midwest ISO effectively provides for this function for the region, pursuant to the Midwest ISO OATT. Moreover, we find that Applicant's proposal to make the Midwest ISO responsible as the provider of last resort for all ancillary services is consistent with Order No. 2000.¹⁰³ Accordingly, we find that Applicant's proposed framework, with regard to ancillary services, satisfies this Appendix I function.

¹⁰¹ComEd, 90 FERC at 61,622.

¹⁰²International Transmission cites to the Commission's statement in ComEd, 90 FERC at 61,622 that a transco could provide ancillary services, pending the submission of a detailed filing.

¹⁰³Order No. 2000 at 31,140.

7. OASIS

International Transmission states that under sections 6.1 and 6.2 of the ITC-MISO Agreement, Midwest ISO would implement and maintain an Open Access Same-Time Information System(s) (OASIS) or successor system(s) pursuant to the terms of the Midwest OATT for the International Transmission System and all other facilities comprising the System on or before the Control Date.

Commission Response

We believe that the Midwest ISO effectively provides for this function. Moreover, we find that Applicant's proposal to make the Midwest ISO responsible for implementing and maintaining an OASIS pursuant to the terms of the Midwest ISO OATT is consistent with Order No. 2000's requirement that the RTO be the OASIS site administrator.¹⁰⁴

8. TTC and ATC

Under section 6 of the ITC-MISO Agreement, Midwest ISO would determine the available transmission capacity (ATC) under the Midwest ISO OATT and the International Transmission OATT consistent with Appendix E, Section III and Appendix B of the Midwest ISO Agreement. Midwest ISO's determination would also be based on data provided by International Transmission. In addition, Midwest ISO would review and approve requests for transmission service, and for scheduling transmission transactions over the International System, consistent with Appendix E, Section III of the Midwest ISO Agreement

Commission Response

The Commission has stated that under an ITC structure, the Midwest ISO would independently calculate total transmission capacity (TTC) and ATC in consultation with any ITC operating in its territory.¹⁰⁵ We believe that the Midwest ISO effectively provides for this function. Moreover, we

¹⁰⁴Order No. 2000 at 31,144.

¹⁰⁵ComEd at 61,616; Appendix I, 7.3.

find that Applicant's proposal to make the Midwest ISO responsible for this function is consistent with Order No. 2000.¹⁰⁶

9. Market Monitoring

Section 10 of the ITC-MISO agreement provides that Midwest ISO would conduct market monitoring for the International Transmission Zone in accordance with Article 8 of the Midwest ISO Agreement, and would impose and collect penalties as provided for in the Midwest ISO Agreement and the Midwest ISO OATT. International Transmission states that any of the Commission's concerns in ComEd regarding the delegation of market monitoring duties to a transco¹⁰⁷ (i.e., ITC) are inapplicable here because the ITC-MISO Agreement neither proposes nor contemplates that International Transmission will operate or administer markets in the future.

Commission Response

We will accept this provision. International Transmission will not operate or administer markets, now or in the future; rather, Midwest ISO will have full authority to monitor market activities in the International Transmission zone. We address Midwest ISO proposed market monitoring plan in a concurrent order in Docket No. RT01-87-000 et al. which finds Midwest ISO's plan generally satisfies the Order No. 2000 requirements for this function, subject to certain additional filings.

10. Transmission Planning and Expansion

Section 8 of the ITC-MISO Agreement would permit International Transmission to plan its system in coordination with the Midwest ISO, to the same extent as if it were an Owner, pursuant to Appendix B of the Midwest ISO Agreement.¹⁰⁸ In addition, based on International Transmission's future status as an independent transmission business, section 8.2 of the ITC-MISO Agreement would give International Transmission the right to propose to the Commission that it be granted greater discretion to plan the International System than that possessed by Owners under the Midwest ISO Agreement. International Transmission seeks Commission approval of its right to "make a proposal to exercise greater discretion regarding the planning of the International System, in coordination with the

¹⁰⁶Order No. 2000 at 31,145.

¹⁰⁷In ComEd, 90 FERC at 61,623, the Commission expressed concern that Appendix I did not explicitly say that the Midwest ISO monitoring function will monitor markets operated or administered by the ITC, which the Commission stated potentially created a gap in the market monitoring of the ITC.

¹⁰⁸International Transmission states that this provision imposes on Midwest ISO the same obligations and responsibilities to International Transmission as a "member" as Midwest ISO has to "Owners" with regard to planning under Appendix B of the Midwest ISO Agreement.

Midwest ISO, and subject to approval by this Commission.¹⁰⁹ International Transmission states that Midwest ISO would have the primary responsibility and final decision-making authority for regional transmission planning. International Transmission also agrees to use "commercially reasonable efforts" to construct transmission facilities as directed by Midwest ISO, consistent with Article Four, Section I.C of the Midwest ISO Agreement.

Intervenors

The Competitive Coalition states that it is premature to address International Transmission's intent to engage, at some unspecified time in the future, in planning its transmission system.¹¹⁰

Commission Response

International Transmission explains that pursuant to Appendix B¹¹¹ of the Midwest ISO Agreement, it proposes to plan its system in coordination with Midwest ISO to the same extent as if it were an Owner. Section 8.2, would provide for greater planning discretion and authority to plan its system. International Transmission intends for section 8.2, a Special Provision, to take effect after its divestiture to an unaffiliated entity. Pursuant to section 8.2, International Transmission may submit to the Commission a transmission planning arrangement similar to that proposed in RTO West or its own planning model.¹¹²

¹⁰⁹While it currently does not have a specific plan, International Transmission states that it may submit a transmission planning arrangement similar to that proposed in RTO West, 95 FERC at 61,341, or its own planning model for Commission approval.

¹¹⁰The Competitive Coalition, CMTC and IEU-Ohio raise the same concern with respect to generator interconnection services.

¹¹¹Appendix B describes the process to be used by the Midwest ISO in planning the transmission system.

¹¹² RTO West, 95 FERC at 61,341.

Although a detailed description of International Transmission's plan is not before us,¹¹³ we will provide guidance on the general principles that have been described in the application. In ComEd and RTO West, the Commission indicated that dual responsibility for certain functions required of an RTO by Order No. 2000, including transmission planning and expansion, could be shared by transmission entities in a region as long as the plan is sufficiently detailed and provides clarity about the decisional process for the Commission to evaluate the proposal; however, the Commission required more detailed proposals.¹¹⁴ In RTO West the Commission stated that the planning and expansion proposal set forth could result in transmission and expansion that, although not inconsistent with reliability, may not treat transmission (wires) and non-wires (i.e., generation and perhaps demand-side actions) solutions objectively and neutrally if RTO West does not consider least cost planning in its approval process. The Commission thus directed RTO West and the ITC in that proceeding to further explain how they would share the transmission planning and expansion responsibility and how non-wires solutions will be considered in the decisionmaking process. We believe that International Transmission's proposal lacks similar detail.¹¹⁵ Accordingly, we will direct International Transmission to provide these details in any such plan when it is filed with the Commission for approval, pursuant to section 8.2, provided that International Transmission achieves independence. At such time, we will also examine the extent of International Transmission's "greater discretion and authority," as provided in section 8.2. However, with regard to section 8.1, we will accept International Transmission's proposal, which would allow it to plan the International Transmission System in coordination with Midwest ISO, consistent with the provisions in Appendix B of the Midwest ISO Agreement.

11. Generator Interconnection Services

International Transmission states that maximizing generator interconnection with the International Transmission Zone is fundamental to its business strategy of operating an independent stand-alone transmission business. It further states that the efficient interconnection of generators within the International Transmission Zone is critical to promoting development of fluid generation markets in Michigan. Section 9 would give International Transmission the authority to propose generator interconnection protocols for the International Transmission Zone. International Transmission asserts that given its extensive experience, it could propose superior generator interconnection service under the International Transmission OATT than those services offered on a region-wide basis by Midwest ISO. According to International Transmission, section 9 of the ITC-MISO Agreement would provide

¹¹³See note 110.

¹¹⁴ComEd, 90 FERC at 61,624. International Transmission proposed that the transco would develop a plan for construction of transmission facilities within the transco's territory, and where Midwest ISO's review would be limited to a "reliability review." International Transmission states that under this model, the transco's plan would become part of the Midwest ISO's regional plan.

¹¹⁵95 FERC at 61,341.

International Transmission with the flexibility to propose to the Commission at a future date, services superior to those implemented in Midwest ISO or Alliance-MISO Super Region. On or after the Control Date, however, International Transmission expects to abide by Midwest ISO protocols until the Commission approves any of International Transmission's proposals for generator interconnection service protocols within the International Transmission Zone.

Intervenors

CMTC and IEU-Ohio state that a generation interconnection agreement specific to International Transmission, which would displace the common interconnection agreement, would violate the Settlement Agreement and work against seamless market objectives for the region. They assert that International Transmission is bound to honor the Settlement Agreement, which they state requires a common interconnection agreement to be available throughout the region served by the Midwest ISO and the Alliance RTO.¹¹⁶ They argue that International Transmission's proposal that it should have the ability, in the future, to delegate responsibility for interconnection standards also conflicts with the Settlement Agreement and should not be approved by the Commission. The Competitive Coalition states that it is premature to address the merits of International Transmission's intent to engage at some unspecified time in the future, in providing generation interconnection services; it states that this right is contrary to the Commission's policy initiative to adopt standard interconnection procedures and agreements. The Competitive Coalition requests that section 9 be modified to require International Transmission to adopt the same interconnection procedures and agreement ultimately approved for Midwest ISO until the Commission approves the standard generator interconnection procedures and agreement in Docket No. RM02-1-000.

International Transmission responds that its proposed authority to develop and propose generator interconnection practices and protocols for International Transmission's zone does not violate the Alliance RTO and Midwest ISO's Settlement Agreement obligations to develop common generator interconnection protocols.¹¹⁷ International Transmission states that the ITC-MISO Agreement provides that any such proposals would be subject to Commission approval, and further, that customers have the option of the Super Regional tariff (enabling them to pick the generator interconnection service option from either the Super Region or International Transmission that most

¹¹⁶August 31 Transmittal at 8 (citing Settlement Agreement at 7).

¹¹⁷International Transmission cites to Section 9 of the ITC-MISO Agreement as specifically providing International Transmission with the flexibility to seek Commission approval of generator interconnection services that are superior to those implemented for the Super Region.

appropriately suits their needs). Finally, International Transmission states that its success as a stand-alone transmission business depends on attracting merchant generator interconnections.¹¹⁸

Commission Response

We will not make a determination on this aspect of International Transmission's proposal at this time pending the outcome of the Generic Proceeding on interconnection procedures (Docket No. ER01-3053)¹¹⁹ and International Transmission's divestiture to an as-yet-unidentified buyer. We note that Midwest ISO filed Generator Interconnection Procedures and a standard Interconnection Agreement in Docket No. ER01-3053-000. Commission action was held in abeyance pending the outcome of the Generic Proceeding, which should resolve many, if not all, of the issues presented in that proceeding.¹²⁰ Upon conclusion of the Generic Proceeding, the generation interconnection procedures contemplated by International Transmission, and/or its successor, should be consistent with the outcome of that proceeding.

12. Open Architecture

International Transmission states that the ITC-MISO Agreement is consistent with the RTO open architecture requirement of Order No. 2000. International Transmission states that the Appendix I concept furthers the goals of open architecture because it accommodates the specialized characteristics of truly independent transmission companies, such as International Transmission. In addition, International Transmission states that the Appendix I feature has allowed International Transmission to pursue a "revised corporate strategy" that "reflects changes in facility ownership." International Transmission asserts that nothing in the Midwest ISO Agreement or Midwest ISO OATT would cause Midwest ISO to otherwise fail the open architecture principle.

Commission Response

We conclude that the proposal, filed pursuant to the Midwest ISO Agreement and the ITC-MISO Agreement, provides a sound framework that will enable the Midwest ISO to expand geographically and merge with other markets in the Midwest region. Moreover, our review of the proposal has not identified any provisions that would discourage future growth. Therefore, we find that International Transmission's proposal is consistent with open architecture function and does not limit Midwest ISO's capability to work with various market participants and stakeholders to ensure that the

¹¹⁸ Answer at 12.

¹¹⁹ See Standardizing Generator interconnection Agreements and Procedures, Advance Notice of Proposed Rulemaking (Docket No. RM02-1-000 (2001).

¹²⁰ Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,136 (2001).

Midwest ISO will continue to evolve with the changes in the electric industry as Order No. 2000 requires.¹²¹

VI. Other Matters

Super-Regional Rate Adjustment (SRA) Charge

Alliance Companies state that International Transmission's filing does not indicate whether its rates for service within the International Transmission Zone include the applicable SRA charge. They contend that in order for International Transmission to fully comply with the Settlement, it must include the applicable SRA charge for all transactions under the International Transmission OATT. However, in Docket No. ER01-123-005 et al., Midwest ISO seeks to suspend the effective date of the SRA charge pending the filing of an Alliance open access tariff. Therefore, we will address Alliance Companies' concern in that proceeding.

Waiver of Prior Notice Requirement

We will grant waiver of the 60-day prior notice requirement with respect to the ITC-MISO Agreement and Supplemental Agreement, as discussed herein, to be effective on the date upon which Midwest ISO begins operation.

The Commission Orders:

(A) The late-filed motions to intervene are hereby granted and late-filed protests are hereby granted for consideration, as discussed in the body of this order.

(B) The answers to comments and protests listed in the Appendix are hereby granted, as discussed in the body of this order.

(C) The proposed transfer of functional control of International Transmission's jurisdictional facilities to Midwest ISO is hereby approved, as discussed in the body of this order, and International Transmission and DTE Energy are hereby directed to file, within 30 days of the date of issuance of this order, supplemental information, as discussed in the body of this order.

(D) International Transmission's ITC-MISO Agreement is hereby accepted for filing, as designated in its filing, and as modified by the Supplemental Agreement and in the body of this order, and International Transmission is hereby directed to provide additional information, as discussed in the body of this order.

¹²¹Order No. 2000 at 31,171.

(E) International Transmission's Supplemental Agreement is hereby accepted for filing, as designated in its supplemental filing, and as discussed in the body of this order.

By the Commission. Commissioner Brownell concurred with a
statement to be issued later.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.

**Motions to Intervene, Notices of Intervention, Comments and Protests
Docket No. ER01-3000-000, RT01-101-000, EC01-146-000**

Alliance Cos.

Alliant Energy Corporate Services, Inc.

American Transmission Co., LLC (ATCLLC)

Association of Businesses Advocating Tariff Equality (ABATE) (ABTco, Inc., a Louisiana-Pacific Company; ATOFINA Chemicals, Inc.; BASF Corp.; The Budd Co.; Cargill; DaimlerChrysler Corp.; Eaton Corp.; Edward C. Levy Co.; Escanaba Paper; a Mead Co.; Ford Motor Co.; General Motors Corp.; Marin Marietta Magnesia Specialties, Inc.; National Steel Corp.-Great Lakes Division; Pharmacia & Upjohn Col.; Quanex Corp.; and Steelcase, Inc.)

Calpine Corporation

Coalition of Midwest Transmission Customers and Industrial Energy Users-Ohio (CMTC and IEU-Ohio)

The Competitive Coalition (NRG Cos.; Mirant Entities; Constellation Cos.; PSEG Cos.) Consumers Energy Co.

Dairyland Power Cooperative

Duke Energy North America, LLC

Dynegy Power Marketing, Inc.

Enron Power Marketing, Inc.

Great River Energy (Great River)

Illinois Commerce Commission

Michigan Public Power Agency (MPPA)

Michigan Public Service Commission (Michigan Commission)

Midwest Independent Transmission System Operator, Inc. (Midwest ISO)

Midwest Independent System Operator (ISO) Transmission Owners

Mirant Americas Energy Marketing, LP., Mirant State Line Ventures, Inc., Mirant Neenah, LLC, and Mirant Zeeland, LLC (Mirant Parties)

Public Utilities Commission of Ohio

SE Michigan Systems (City of Croswell, Michigan; the City of Detroit, Michigan; the Village of Sebawaing, Michigan; Thumb Electric Cooperative, and Nordic Energy, L.L.C.)

Trans-Elect, Inc.

Wisconsin Electric Power Co.

Wisconsin Public Power, Inc.

Wolverine Power Supply Cooperative, Inc.